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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/658,763	09/08/2000	Herbert Parks Hartgrove	PGI6044P0200US	3252

32116 7590 07/15/2003

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
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EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 07/15/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-12

Office Action Summary

Application No.

09/658763

Applicant(s)

Hartgrove

Examiner

John Guarnello

Group Art Unit

1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5/6/2003
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-14, 15-22 is/are pending in the application.
- Of the above claim(s) 1-11 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) 12-14, 16-22 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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DETAILED ACTION

15. The Examiner acknowledges paper # 11, the amendment of 05/06/2003.

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

17. The Examiner notes for the record that the markup version supplied by applicant does not indicated changes made to the newly amended claims,

NOTE: claims 13 and 14. This should be addressed.

Claim Rejections - 35 USC § 112

18. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

19. Claims 12-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 12, it is the Examiner's position that the claim is directed to a durable nonwoven fabric comprising a web of polyester fibers which is imaged and patterned, and before dyeing is saturated with a pre-dye finish before curing. Claim 12 recites physical properties of a nonwoven fabric with a basis weight, Martindale abrasion value, a combined drape value, and a combined bend value. **Ex parte Slob, 157 USPQ 172** states the following with regard to an article claimed by defining property values:

Claims merely setting forth physical characteristics desired in an article, and not setting forth specific compositions which would meet such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients presently existing or which might be discovered in future and which would impart desired characteristics; thus, the expression "a liquefiable substance having a liquefaction temperature from about 40 degrees Centigrade to about 300 degrees C and being compatible with the ingredients in the powdered detergent composition" is too broad and indefinite since it purports to cover everything which will perform the desired

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functions regardless of its composition, and, in effect, recites compounds by what it is desired that they do rather than what they are; the expression is too broad since it appears to read upon materials that could not possibly be used to accomplish purposes intended.

Thus, claims 12-22 are indefinite for reciting only the desired physical characteristics or properties of the nonwoven fabric, rather than setting forth the structural/chemical characteristics of said nonwoven.

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 12-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cruise et al. 5,874,159 in view of Drelich et al. 5,098,764 and Namiki et al. 3,966,406 and Tohyama et al. 5,266,354.

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Rejection is substantially maintained except with the addition of Tohyama as follows. Cruise describes a method of making nonwoven fabrics which are durable, (see abstract). Cruise describes the fabric is made of two layers (corresponding to a precursor web), (see abstract; column 2, lines 11-22). Cruise describes the base fabrics can be similar or different and can be hydroentangled, (column 3, lines 12-19; column 4, lines 65-68). Cruise describes the fabric layers can be made of polyester and polyamide (corresponding to nylon), or blends thereof (column 6, lines 39-44). Cruise differs from the claimed invention because it is silent about the image transfer device to form an imaged non-woven fabric, dyeing, and pre-dye finish or coating.

Drelich describes an image transfer device to form an imaged nonwoven fabric with enhanced physical properties and fabric with pleasing appearance, (column 2, lines 6-11; see Figure 3). Drelich describes the production of fabrics with superior properties with entangled fibers, (column 2, lines 38-68).

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Namiki describes dyeing of fibrous articles, (see abstract). Namiki describes dyeing of polyester-type fibers which can be in the form of knitted, woven, or non-woven fabric, (column 3, lines 5-13). Namiki describes jet dyeing of fabrics, (column 3, lines 14-32).

Tohyama describes a coated (corresponding to a pre-dye finish before curing) fabric of polyester fiber, (see abstract). Tohyama describes the coating or pre-dye finish, (column 3, lines 26-59).

It still would have been obvious to one of ordinary skill in the art to modify the fabric of Cruise with the image transfer device of Drelich and to modify the fabric of Cruise with the jet dyeing of Namiki and to coat or finish the fabric of Cruise with the coating of Tohyama motivated with the expectation that improved fabric properties of image and pattern appearance as well as free from dye irregularity, (column 2, lines 15-17 of '406), would result, (column 2, lines 7-8, 67-68) as well as improving the dye from migrating, (column 3, lines 57-59 of '354).

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Applicant's arguments regarding Cruise and abrasion resistance have been considered, but it is the Examiner's position that polyester fabric layers are described by Cruise and the properties of abrasion resistance are noted but since the claim sets forth physical characteristics desired in the article and no specific composition of polyester which would meet those characteristics the claims are vague, indefinite and functional since they cover any conceivable combination of ingredients or components either presently existing or which may be discovered in the future, see *Ex Parte Slob*, 157 USPQ 172 (Bd. Pat. App. & Int. 1968). Furthermore, it is the Examiner's position that since the prior art of record describes the basic chemical and structural characteristics of the nonwoven fabric the other properties would be inherent. Applicant's other arguments regarding abrasion resistance have been considered but Cruise does describe durability, (column 2, lines 11-22) which implies some aspects of abrasion resistance. Applicant's arguments regarding product by process were considered but are not considered germane with the grounds of rejection regarding **Ex parte Slob** as noted above.

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22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


John J. Guarriello:gj

Patent Examiner

July10, 2003


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
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